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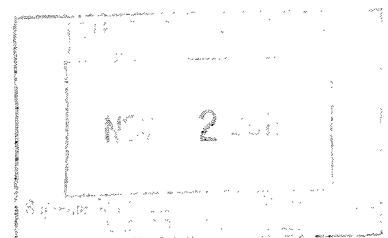


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Corrections to Snider's Statement of the Case.

1. Bette did not give the property to Ron and Toni.

In their Statement of the Nature of the Case, Sniders make the claim that “Bette gave the property to Ron and Toni” by executing a “Request for Termination of and Application for Special Use Permit” that included the Sniders' names on it. Resp. Brief., p. 4. That claim inferring Bette's intent from the presence of Sniders names on the form at the time she signed it is not supported by any evidence. In fact, the Court found that Bette signed the request form before anyone else signed it. Dorothy Arnold testified that Sniders' names and signature line were added to the form after Bette signed it. Tr. Vol. II, p. 203, line 3 - 23. Contrary to Sniders' claim, all five names were not on the document when Bette signed it. Resp. Brief., p. 8. The evidence established and the Court found that Sniders' names were added after Bette signed the form. R. p. 361, lines 22 – 23. Steven Snider testified, "I have no idea what was on that form when Bette signed it. I know Bette's a pretty sharp lady -- or she was..." Tr. Vol. II, p. 16, lines 15 - 17. Bette also testified that she intended to transfer the cabin solely to the Arnolds. Tr. Vol. 11, p. 41, lines 2-4.

2. Ron did inform Toni that the Ranger's letter advised them to set up a legal entity if they intended to have joint ownership of the cabin.

Sniders claim that when Ron told Toni that the permit was issued in Arnold's name alone, he did not tell her the content of the Ranger's letter indicating that they could set up a legal entity if they wanted to have joint ownership of the cabin. (Resp. Brief, p. 5) That assertion is contrary to the Court's finding that Ron told Toni “that they would have to set forth a legal entity to hold title” as set out in the Ranger's letter. R. p. 362, line

22. Moreover, the finding is inconsistent with Sniders' claim that they were unaware of the need to set up a legal entity to establish their claim to ownership of the property. If, as the Court found, Sniders knew in 1983 that they had to set up a legal entity to hold title, they also had to know they were not the legal owners of the property in 1983. It is inconsistent for them to assert that they thought they did not need to set up a legal entity to stake an ownership claim to the property, after being informed that in order to protect their interests, they had to set up a legal entity.

Sniders further dispute the Court's finding on this issue, by contending that they only discovered they could set up a legal entity for joint ownership in 2009. They claim that in 2009, they first approached Arnolds with that request, but were refused. Resp. Brief, p. 6. This claim is not only inconsistent with the Court's finding that they knew they could set up a legal entity in 1983. R. 362, lines 20-23, R. 363, lines 4-5, but also contrary to Steven Snider's testimony. He testified that Ron told Toni there was a letter from the Ranger, and they could have a lawyer set up an agreement with regard to title. Tr. Vol. II, p. 18, lines 4 – 18; p. 20, lines 25 – p. 21, line 15; Tr. Vol. I, p. 141, line 23 – p. 143, line 1. These inconsistencies testimony cannot be characterized as clear and convincing evidence on the issue.

In addition, if, as Sniders contend, the only time they approached Arnolds to set up a legal entity was in 2009, and at that time they were “refused,” where is the evidence of an intent in 1983 to create a trust. Sniders' trust claims must fail.

ISSUES PRESENTED ON APPEAL

- A. DID THE COURT FAIL TO PROPERLY APPLY THE CLEAR AND CONVINCING EVIDENCE STANDARD IN FINDING THAT SNIDERS WERE ENTITLED TO IMPOSITION OF A CONSTRUCTIVE TRUST AND PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ARNOLDS INTENDED TO CREATE A TRUST FOR THEIR BENEFIT.**
- B. WAS THE COURT'S DECISION DEPRIVING BETTE ARNOLD OF THE RIGHT TO DISPOSE OF HER PROPERTY AS SHE SAW FIT CLEARLY ERRONEOUS BECAUSE IT WAS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE.**
- C. THERE IS NO BASIS TO AWARD ATTORNEYS' FEES.**

III. ARGUMENT

I. THE COURT FAILED TO PROPERLY APPLY THE CLEAR AND CONVINCING EVIDENCE STANDARD IN FINDING THAT SNIDERS WERE ENTITLED TO IMPOSITION OF A CONSTRUCTIVE TRUST AND PROVED BY CLEAR AND CONVINCING EVIDENCE THAT ARNOLDS INTENDED TO CREATE A TRUST FOR THEIR BENEFIT.

A. Sniders were required to prove their claims by clear and convincing evidence.

Sniders concede that the clear and convincing evidence standard must be applied in this case. Resp. Brief., p. 14.

B. There was no clear and convincing evidence of an oral agreement to create a resulting trust or impose a constructive trust.

Bette Arnold was the owner of the cabin property. She inherited Doyle Arnold's interest in the property. Sniders interpret Doyle Arnold's will as intending to transfer title to both Ron and Toni. However, that will had no legal effect. The content of Doyle's will was only relevant because Bette testified that she intended to transfer the property in accordance with her understanding of Doyle's wishes. It was Bette's understanding of Doyle's wishes that was relevant. The transfer came from Bette Arnold, the owner. Bette Arnold transferred the property in accordance with her understanding of Doyle Arnold's intentions. She testified that her husband wanted the property to be transferred to Ron Arnold alone, and that is what she did. Tr. Vol. II, p. 74, line 22 – p. 75, line 5.

Moreover, no one testified that Bette Arnold ever said she intended to create a trust for the benefit of Sniders, nor did Bette testify that she wanted to transfer the property to Sniders directly.

Sniders' brief takes the position that Ron Arnold never intended to set up a trust. They claim that Ron did not tell them they could form a legal entity and that they didn't realize until 2009 that they could form a legal entity to own the permit and cabin. They also claim that on that one and only occasion that they asked the Arnolds to set up a legal entity, they refused. Resp. Brief, p. 5, 6. If Sniders' claim is accepted, there was never an agreement to form any entity for joint ownership of the property. Arnolds received the property from its owner and had no duty to give half of it to Sniders. There was no proof of inequitable conduct by Arnolds and no basis for creation of a constructive or resulting trust.

Sniders suggest that the transfer form with their names on it is proof of Bette's intent to transfer the property to them. But that cannot be the case since the Court found that Sniders names were added to the form after Bette signed it. R. p. 461, lines 22-23. Moreover, Steven Snider testified that he had no idea what was on the form when Bette signed it, because she didn't sign it in their presence. Tr. Vol. II, p. 15, line 24 - p. 16, line 18.

Ron Arnold testified that he told the Sniders on several occasions that he and his wife, Dorothy Arnold, were the sole owners of the cabin and Permit. Tr. Vol. II, p.95, L.12- p.96, L.6. He also testified that he did not offer to enter into any agreement to hold the property in trust for the Sniders' benefit. Tr. Vol. II, p.102, L.1-23. Dorothy Arnold testified that she never discussed ownership of the cabin and Permit with the Sniders. Tr. Vol. II, p.205, L.22- p.206, L.1.

II. THE COURT'S DECISION DEPRIVING BETTE ARNOLD OF THE RIGHT TO DISPOSE OF HER PROPERTY AS SHE SAW FIT WAS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE AND WAS CLEARLY ERRONEOUS.

Sniders argue that this case is not about Bette Arnold's right to dispose of her property as she saw fit because she is not a party to the lawsuit. Even though Bette is not a party to this lawsuit, her rights and intentions in transferring her property were litigated and are the central issue. The ultimate question presented to the District Court was to whom Bette intended to transfer her property, and to whom she did transfer it. The Court answered that question by acknowledging that the Arnolds acquired title to the property from the Forest Service, but then finding that Bette was confused as to who she wanted to give her property to, and that she actually intended to give the property to Ron and Toni, even though she vehemently and unequivocally denied that in Court, in her two affidavits, and in her two written statements in 2005 and 2009. According to the Court, Bette has apparently been confused for the past six years about her intentions with respect to this property.

Without any evidence in the record and without any finding by the Court, Sniders speculate that Bette "simply signed whatever was put in front of her" and assert that her confusion was due to Ron's "manipulation." Bette was not confused or manipulated. She testified:

"Q. Now, when you signed off this application to transfer the cabin and permit to Ron alone, did Ron do anything to coerce you into doing that? You know, did he try to persuade you in any way to give it to him and not to Toni and him together?

A. No.

Q. So this was your voluntary decision?

A. It was my decision.

Q. Okay. Did you have any understanding when Ron - when you transferred the cabin to Ron alone, did you have any understanding or belief as to whether he would share the use of the cabin with his sister, Toni?

A. No.

Q. Did you leave that up to him?

A. Yes. It was at his discretion." Tr. Vol. II, p. 43, lines 2 - 16.

Her statements and her conduct were both consistent over a long period of time. It is undisputed that each time the Sniders asked Bette to sign a document for them establishing their claim to the property, Bette refused. In fact, Toni testified that on the last occasion, Bette got angry at her for bringing it up. Tr. Vol. II, p. 44, lines 24 – p. 45, line 12.

Sniders claims that Bette was confused finds little if any support in the record. They refer to Tr. Vol. II, p. 39, lines 6-8, and say "she "didn't know exactly" what happened when she signed off on the cabin." Resp. Brief, p. 20. That is not evidence of confusion. She signed off on the cabin twice; once in 1983 and once in 2005. In the quoted testimony, Bette was referring to the written statement she made in 2005 that was notarized. R. Vol. I, p. 94; Exh. 2014. Without the document in front of her on the witness stand, Bette clearly remembered not only that she signed it, but that they went and had it notarized. Tr. Vol. II, p. 39, lines 6 - 14.

Nor do Sniders' other cited references support the claim that Bette was "confused."

Tr. Vol. II, p. 40, lines 15-19. Sniders claim Bette didn't recall any discussions at the time she signed the form. Her actual testimony was that she didn't have any discussions with them.

Tr. Vol. II, . 42, lines 7 - 10. Bette wasn't confused when she testified she didn't recall any discussions with Sniders about the transfer of the cabin. There weren't any

discussions because Sniders weren't there when she signed the form, and she didn't go to Cascade to sign the form as Toni Snider falsely testified.

Nor was Bette confused when she testified she knew what Doyle wanted done with the cabin and she did it by leaving it to Ron. That was her understanding of Doyle's intent. She testified:

"Q. Now, there had been some talk about what your deceased husband's intent was and what he wanted done with the cabin. Do you think that what you did, in transferring the cabin to Ron alone, was consistent with what you understood your deceased husband wanted to do with the cabin?

A. Definitely.

Tr. Vol. II, p. 43, lines 17-23.

Tr. Vol. II, p. 47, lines 3-7. Bette was not confused when she said she didn't recognize the document she signed in 2005. She then testified, "I don't remember that exact, but I know I signed a document at that time, and this is my signature on there." She then said she had a recollection of signing the document, and she testified as to her understanding of it, which was consistent with her prior testimony and actions. Tr. Vol. II, p. 47, lines 3 - p. 49, line 13.

Tr. Vol. II, p. 49, line 20 - p. 50, line 17. Bette testified clearly and decisively about her conversation in 2009 with Toni in the car on the way home. She said:

"Well, we were about halfway home when they brought me home... Why, she decided that. And like I said, it made me very angry.

Q. Do you recall what you said in response to her?

A. I told her I wouldn't sign it, that I'd already signed papers for Ron and for him to have the cabin, and that's the way it was."

Q. Okay. Did you say you'd signed papers to Ron?

A. Yes.

Q. Okay. Betty Jean has testified in this case that you used the term you signed it to "you kids," you gave the cabin to "you kids."?

A. No.

Q. Do you recall that?

A. No, I didn't say that.

Q. Okay. Have you ever said to anybody, to your recollection, that you gave the cabin to, quote, "you kids"?

A. No.

Q. Would that be consistent with your understanding of what you did with the cabin?

A. Yes. I -- I gave it to Ron to do with -- use his discretion about sharing it."

Tr. Vol. II, p. 51, line 2 - p. 52, line 1.

Tr. Vol. II, p. 69, lines 11 - 20. Bette's testimony that her husband told her that the Forest Service would only allow one name on the permit did not show confusion. She stated a fact. The limitation of permit owners was not a new policy, just as Ron Arnold testified. Tr. Vol. II, p. 99, lines 20 - p. 100, line 5.

Sniders' criticism of Bette's testimony is inconsequential in light of her clear and consistent testimony that she intended to transfer the cabin to Ron alone when she signed the form. Conversely, Sniders cannot give any plausible explanation for the detailed fabricated story concocted by Toni Snider about everyone going up to Cascade and meeting with the Ranger to complete the transfer form -- a story discredited by everyone else, including her husband, Tr. Vol. II, p. 15, lines 7 - 23, and rejected by the Court in its findings, R. p. 361, lines 16 - 23, although Toni's affidavit (R. p. 183-4) apparently persuaded the Court to accept her story at the summary judgment hearing. R. p. 279, lines 11-19.

Bette's claimed "confusion" comes from Sniders' reliance on the disputed testimony of two of the Sniders' close friends, Earlene Taylor and Betty Jean Arnold. They asserted that Bette made a comments to them about transferring the cabin. Contrary to Sniders claim that these witnesses were unbiased, they both admitted a close relationship with Sniders and virtually none with Arnolds. Earlene Taylor testified that she lived in Kuna where the Sniders live, and went to yard sales together with Toni. Tr.

Vol. I, p. 9, line 10 - 24. Betty Jean Arnold testified that she and Toni Snider go grocery shopping together. She said, "We do things together probably at least once a week." She also worked as Steve Snider's secretary, and admitted she had a close relationship with Steven and Toni. Tr. Vol. I, p. 30, lines 5 - 22.

The evidence presented to discredit Bette Arnold's testimony or establish her 'confusion' was not substantial, competent evidence. The Court's decision to completely disregard her testimony was clearly erroneous.

III. THERE IS NO BASIS TO AWARD ATTORNEYS FEES.

Sniders ask for an award of attorneys fees under Idaho Code Section 12-121, claiming that Arnolds did not identify findings of fact in their appeal. That is not accurate. The Appellants have raised these and other findings of the Court on this appeal. There are legitimate factual and legal grounds for this appeal that preclude consideration of any fee award to either party.

The Court's decision did not set out numbered findings, but instead was in narrative form. Arnold's Opening Brief disputes with many of the Court's findings, including the following:

1. That the Court erred in finding grounds for imposition of a constructive or resulting trust. App. Brief, p. 13.
2. That there was no clear and convincing evidence of an oral agreement to create a resulting trust, because the evidence of intent was disputed, and there was evidence of contrary intent. App. Brief, p. 13 – 14.
3. That Ron Arnold told Sniders that Arnolds were sole owners of the cabin and Permit. App. Brief., p. 14.

4. That Ron Arnold didn't offer to enter into any agreement to hold the property in trust for Sniders' benefit. App. Brief., p. 14.

5. The court's finding that expenses were shared 50/50 was disputed. App. Brief., p. 20. R. p. 364, line 24.

6. "The Court found that Ron Arnold told them he would hold title for their mutual benefit. That conclusion was rendered on disputed and conflicting testimony without any documentary support. That is not clear and convincing evidence sufficient to impose a constructive trust. Sniders did not sustain that burden." App. Brief., p. 23.

7. "The Court ruled that Arnolds took advantage of Sniders by holding title to the cabin and permit over the past 27 years. That finding is clearly erroneous and not supported by substantial competent evidence." App. Brief., p. 24.

8. "Not only was Bette Arnold's testimony at trial consistent with her four prior written statements, but contrary to the Court's finding, she also demonstrated a good memory of all the important facts to which she testified. These included the following:..." App. Brief., p. 26.

9. "The Court's findings adopt both versions of Toni Snider's testimony, even though it made no rational sense. On the one hand, the Court found that Arnold's demanded that Snider's pay half of the expenses, and on the other, that Arnold's didn't tell Snider's how much their half was, which excused Snider's failure to pay half. App. Brief, p. 30.

10. "Moreover, the Court's finding wholly ignores the fact that Bette's trial testimony was entirely consistent with her earlier statements in her two prior affidavits, as

well as the documents she signed in 2005 and 2009. She did not have a change of heart, or a change of story, unlike Toni Snider.” App. Brief, p. 31.

Appellants did dispute findings of fact by the trial court. This appeal is well taken and grounded in fact and law. There is no basis for an award of fees.

CONCLUSION

For the reasons set out herein, Respondents respectfully request that this Court reverse the judgment of the District Court.

Dated: November 21, 2011

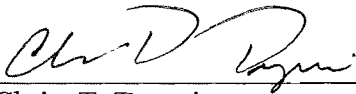


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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2011, two (2) copies of the foregoing document was served by U.S. Mail, first class postage prepaid, upon:

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